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U. S. Dept. of state

Message of the President of the United States, transmitting a correspondence between the Secretary of State and the authorities of Great Britain and France, in relation to the recent removal of certain citizens of the United States from the British mail-steamer Trent. Washington, 1861.

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37TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 8.

U.S Dept of State

MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A correspondence between the Secretary of State and the authorities of Great Britain and France, in relation to the recent removal of certain citizens of the United States from the British mail-steamer Trent.

JANUARY 6, 1862 —Read and ordered to be printed. On motion by Mr. Sumner that the message be referred to the Committee on Foreign Relations—

Ordered, That the further consideration thereof be postponed to, and be the special order for Thursday next, the 9th instant, at one o'clock.

To the Senate and House of Representatives:

I transmit to Congress a correspondence which has taken place between the Secretary of State and authorities of Great Britain and France, on the subject of the recent removal of certain citizens of the United States from the British mail-steamer Trent, by order of Captain Wilkes, in command of the United States war-steamer San Jacinto.

ABRAHAM LINCOLN.

WASHINGTON, *December* 30, 1861.

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CORRESPONDENCE.

Mr. Seward to Mr. Adams.

[Extract.]

DEPARTMENT OF STATE,
Washington, November 30, 1861.

SIR: Your confidential note of the 15th of November, not marked as a despatch, has been submitted to the President, and I hasten to reply to it in time for the Wednesday's mail.

No minister ever spoke or acted more wisely in a crisis which excited deep public solicitude than you did on the occasion of the lord mayor's dinner. We are impressed very favorably by Lord Palmerston's conversation with you. You spoke the simple fact when you told him that the life of this insurrection is sustained by its hopes of recognition in Great Britain and in France. It would perish in ninety days if those hopes should cease. I have never for a moment believed that such a recognition could take place without producing immediately a war between the United States and all the recognizing powers. I have not supposed it possible that the British government could fail to see this; and at the same time I have sincerely believed the British government must, in its inmost heart, be as averse from such a war as I know this government is.

I am sure that this government has carefully avoided giving any cause of offence or irritation to Great Britain. But it has seemed to me that the British government has been inattentive to the currents that seemed to be bringing the two countries into collision. * * * * * *

I infer from Lord Palmerston's remark that the British government is now awake to the importance of averting possible conflict, and disposed to confer and act with earnestness to that end. If so, we are disposed to meet them in the same spirit, as a nation chiefly of British lineage, sentiments, and sympathies—a civilized and humane nation—a Christian people.

Since that conversation was held Captain Wilkes, in the steamer San Jacinto, has boarded a British colonial steamer and taken from her deck two insurgents who were proceeding to Europe on an errand of treason against their own country. This is a new incident, unknown to and unforeseen, at least in its circumstances, by Lord Palmerston. It is to be met and disposed of by the two governments, if possible, in the spirit to which I have adverted. Lord Lyons has prudently refrained from opening the subject to me, as, I presume, waiting instructions from home. We have done nothing on the subject to anticipate the discussion, and we have not furnished you with any explanations. We adhere to that course now, because we think it more prudent that the ground taken by the British government should be first made known to us here, and that the discussion, if there must be one, shall be had here. It is proper, however, that you should know one fact in the case, without indicating that we attach much importance to it, namely, that, in the capture of Messrs. Mason and Slidell on board a British vessel, Captain Wilkes having acted without any instructions from the government, the subject is therefore free from the embarrassment which might have resulted if the act had been specially directed by us.

I trust that the British government will consider the subject in a friendly temper, and it may expect the best disposition on the part of this government.

Although this is a confidential note, I shall not object to your reading it to Earl Russell and Lord Palmerston if you deem it expedient.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., *&c.*, *&c.*, *&c.*

Earl Russell to Lord Lyons.

FOREIGN OFFICE, *November* 30, 1861.

MY LORD: Intelligence of a very grave nature has reached her Majesty's government.

This intelligence was conveyed officially to the knowledge of the admiralty by Commander Williams, agent for mails on board the contract steamer Trent.

It appears from the letter of Commander Williams, dated "Royal Mail Contract Packet Trent, at sea, November 9," that the Trent left Havana on the 7th instant, with her Majesty's mails for England, having on board numerous passengers. Commander Williams states that shortly after noon on the 8th a steamer having the appearance of a man-of-war, but not showing colors, was observed ahead. On nearing her at 1.15 p. m. she fired a round shot from her pivot-gun across the bows of the Trent, and showed American colors. While the Trent was approaching her slowly the American vessel discharged a shell across the bows of the Trent, exploding half a cable's length ahead of her. The Trent then stopped, and an officer with a large armed guard of marines boarded her. The officer demanded a list of the passengers; and, compliance with this demand being refused, the officer said he had orders to arrest Messrs. Mason, Slidell, McFarland, and Eustis, and that he had sure information of their being passengers in the Trent. While some parley was going on upon this matter, Mr. Slidell stepped forward and told the American officer that the four persons he had named were then standing before him. The commander of the Trent and Commander Williams protested against the act of taking by force out of the Trent these four passengers, then under the protection of the British flag. But the San Jacinto was at that time only two hundred yards from the Trent, her ship's company at quarters, her ports open, and tompions out. Resistance was therefore out of the question, and the four gentlemen before named were forcibly taken out of the ship. A further demand was made that the commander of the Trent should proceed on board the San Jacinto, but he said he would not go unless forcibly compelled likewise, and this demand was not insisted upon.

It thus appears that certain individuals have been forcibly taken from on board a British vessel, the ship of a neutral power, while such vessel was pursuing a lawful and innocent voyage—an act of violence which was an affront to the British flag and a violation of international law.

Her Majesty's government, bearing in mind the friendly relations which have long subsisted between Great Britain and the United States, are willing to believe that the United States naval officer who committed the aggression was not acting in compliance with any authority from his government, or that if he conceived himself to be so authorized he greatly misunderstood the instructions which he had received. For the government of the United States must be fully aware that the British government could not allow such an affront to the national honor to pass without full reparation, and her Majesty's government are unwilling to believe that it could be the deliberate intention of the government of the

United States unnecessarily to force into discussion between the two governments a question of so grave a character, and with regard to which the whole British nation would be sure to entertain such unanimity of feeling.

Her Majesty's government, therefore, trust that when this matter shall have been brought under the consideration of the government of the United States that government will, of its own accord, offer to the British government such redress as alone could satisfy the British nation, namely, the liberation of the four gentlemen and their delivery to your lordship, in order that they may again be placed under British protection, and a suitable apology for the aggression which has been committed.

Should these terms not be offered by Mr. Seward you will propose them to him.

You are at liberty to read this despatch to the Secretary of State, and, if he shall desire it, you will give him a copy of it.

I am, &c.,

RUSSELL.

The Lord LYONS, K. C. B., *&c.*, *&c.*, *&c.*

Mr. Seward to Lord Lyons.

DEPARTMENT OF STATE,
Washington, December 26, 1861.

MY LORD: Earl Russell's despatch of November the 30th, a copy of which you have left with me at my request, is of the following effect, namely:

That a letter of Commander Williams, dated Royal Mail Contract Packet-boat Trent, at sea, November 9th, states that that vessel left Havana on the 7th of November, with her Majesty's mails for England, having on board numerous passengers. Shortly after noon, on the 8th of November, the United States war steamer San Jacinto, Captain Wilkes, not showing colors, was observed ahead. That steamer, on being neared by the Trent, at one o'clock fifteen minutes in the afternoon, fired a round shot from a pivot-gun across her bows, and showed American colors. While the Trent was approaching slowly towards the San Jacinto she discharged a shell across the Trent's bows, which exploded at half a cable's length before her. The Trent then stopped, and an officer with a large armed guard of marines boarded her. The officer said he had orders to arrest Messrs. Mason, Slidell, McFarland, and Eustis, and had sure information that they were passengers in the Trent. While some parley was going on upon this matter, Mr. Slidell stepped forward and said to the American officer that the four persons he had named were standing before him. The commander of the Trent and Commander Williams protested against the act of taking those four passengers out of the Trent, they then being under the protection of the British flag. But the San Jacinto was at this time only two hundred yards distant, her ship's company at quarters, her ports open and tompions out, and so resistance was out of the question. The four persons before named were then forcibly taken out of the ship. A further demand was made that the commander of the Trent should proceed on board the San Jacinto, but he said he would not go unless forcibly compelled likewise, and this demand was not insisted upon.

Upon this statement Earl Russell remarks that it thus appears that certain individuals have been forcibly taken from on board a British vessel, the ship of a neutral power, while that vessel was pursuing a lawful and innocent voyage—an act of violence which was an affront to the British flag and a violation of international law.

Earl Russell next says that her Majesty's government, bearing in mind the

friendly relations which have long subsisted between Great Britain and the United States, are willing to believe that the naval officer who committed this aggression was not acting in compliance with any authority from his government, or that, if he conceived himself to be so authorized, he greatly misunderstood the instructions which he had received.

Earl Russell argues that the United States must be fully aware that the British government could not allow such an affront to the national honor to pass without full reparation, and they are willing to believe that it could not be the deliberate intention of the government of the United States unnecessarily to force into discussion between the two governments a question of so grave a character, and with regard to which the whole British nation would be sure to entertain such unanimity of feeling.

Earl Russell, resting upon the statement and the argument which I have thus recited, closes with saying that her Majesty's government trust that when this matter shall have been brought under the consideration of the government of the United States, it will, of its own accord, offer to the British government such redress as alone could satisfy the British nation, namely, the liberation of the four prisoners taken from the Trent, and their delivery to your lordship, in order that they may again be placed under British protection, and a suitable apology for the aggression which has been committed. Earl Russell finally instructs you to propose those terms to me, if I should not first offer them on the part of the government.

This despatch has been submitted to the President.

The British government has rightly conjectured, what it is now my duty to state, that Captain Wilkes, in conceiving and executing the proceeding in question, acted upon his own suggestions of duty, without any direction or instruction, or even foreknowledge of it, on the part of this government. No directions had been given to him, or any other naval officer, to arrest the four persons named, or any of them, on the Trent or on any other British vessel, or on any other neutral vessel, at the place where it occurred or elsewhere. The British government will justly infer from these facts that the United States not only have had no purpose, but even no thought, of forcing into discussion the question which has arisen, or any other which could affect in any way the sensibilities of the British nation.

It is true that a round shot was fired by the San Jacinto from her pivot-gun when the Trent was distantly approaching. But, as the facts have been reported to this government, the shot was nevertheless intentionally fired in a direction so obviously divergent from the course of the Trent as to be quite as harmless as a blank shot, while it should be regarded as a signal.

So also we learn that the Trent was not approaching the San Jacinto slowly when the shell was fired across her bows, but, on the contrary, the Trent was, or seemed to be, moving under a full head of steam, as if with a purpose to pass the San Jacinto.

We are informed also that the boarding officer (Lieutenant Fairfax) did not board the Trent with a large armed guard, but he left his marines in his boat when he entered the Trent. He stated his instructions from Captain Wilkes to search for the four persons named, in a respectful and courteous, though decided manner, and he asked the captain of the Trent to show his passenger list, which was refused. The lieutenant, as we are informed, did not employ absolute force in transferring the passengers, but he used just so much as was necessary to satisfy the parties concerned that refusal or resistance would be unavailing.

So, also, we are informed that the captain of the Trent was not at any time or in any way required to go on board the San Jacinto.

These modifications of the case, as presented by Commander Williams, are based upon our official reports.

I have now to remind your lordship of some facts which doubtlessly were

omitted by Earl Russell, with the very proper and becoming motive of allowing them to be brought into the case, on the part of the United States, in the way most satisfactory to this government. These facts are, that at the time the transaction occurred an insurrection was existing in the United States which this government was engaged in suppressing by the employment of land and naval forces; that in regard to this domestic strife the United States considered Great Britain as a friendly power, while she had assumed for herself the attitude of a neutral; and that Spain was considered in the same light, and had assumed the same attitude as Great Britain.

It had been settled by correspondence that the United States and Great Britain mutually recognized as applicable to this local strife these two articles of the declaration made by the Congress of Paris in 1856, namely, that the neutral or friendly flag should cover enemy's goods not contraband of war, and that neutral goods not contraband of war are not liable to capture under an enemy's flag. These exceptions of contraband from favor were a negative acceptance by the parties of the rule hitherto everywhere recognized as a part of the law of nations, that whatever is contraband is liable to capture and confiscation in all cases.

James M. Mason and E. J. McFarland are citizens of the United States and residents of Virginia. John Slidell and George Eustis are citizens of the United States and residents of Louisiana. It was well known at Havana when these parties embarked in the Trent that James M. Mason was proceeding to England in the affected character of a minister plenipotentiary to the court of St. James, under a pretended commission from Jefferson Davis, who had assumed to be president of the insurrectionary party in the United States, and E. J. McFarland was going with him in a like unreal character of secretary of legation to the pretended mission. John Slidell, in similar circumstances, was going to Paris as a pretended minister to the Emperor of the French, and George Eustis was the chosen secretary of legation for that simulated mission. The fact that these persons had assumed such characters has been since avowed by the same Jefferson Davis in a pretended message to an unlawful and insurrectionary Congress. It was, as we think, rightly presumed that these ministers bore pretended credentials and instructions, and such papers are in the law known as despatches. We are informed by our consul at Paris that these despatches, having escaped the search of the Trent, were actually conveyed and delivered to emissaries of the insurrection in England. Although it is not essential, yet it is proper to state, as I do also upon information and belief, that the owner and agent, and all the officers of the Trent, including Commander Williams, had knowledge of the assumed characters and purposes of the persons before named when they embarked on that vessel.

Your lordship will now perceive that the case before us, instead of presenting a merely flagrant act of violence on the part of Captain Wilkes, as might well be inferred from the incomplete statement of it that went up to the British government, was undertaken as a simple legal and customary belligerent proceeding by Captain Wilkes to arrest and capture a neutral vessel engaged in carrying contraband of war for the use and benefit of the insurgents.

The question before us is, whether this proceeding was authorized by and conducted according to the law of nations. It involves the following inquiries:

1st. Were the persons named and their supposed despatches contraband of war?

2d. Might Captain Wilkes lawfully stop and search the Trent for these contraband persons and despatches?

3d. Did he exercise that right in a lawful and proper manner?

4th. Having found the contraband persons on board and in presumed possession of the contraband despatches, had he a right to capture the persons?

5th. Did he exercise that right of capture in the manner allowed and recognized by the law of nations?

If all these inquiries shall be resolved in the affirmative the British government will have no claim for reparation.

I address myself to the first inquiry, namely, were the four persons mentioned, and their supposed despatches, contraband?

Maritime law so generally deals, as its professors say, *in rem*, that is with property, and so seldom with persons, that it seems a straining of the term contraband to apply it to them. But persons, as well as property, may become contraband, since the word means broadly "contrary to proclamation, prohibited, illegal, unlawful."

All writers and judges pronounce naval or military persons in the service of the enemy contraband. Vattel says war allows us to cut off from an enemy all his resources, and to hinder him from sending ministers to solicit assistance. And Sir William Scott says you may stop the ambassador of your enemy on his passage. Despatches are not less clearly contraband, and the bearers or couriers who undertake to carry them fall under the same condemnation.

A subtlety might be raised whether pretended ministers of a usurping power, not recognized as legal by either the belligerent or the neutral, could be held to be contraband. But it would disappear on being subjected to what is the true test in all cases—namely, the spirit of the law. Sir William Scott, speaking of civil magistrates who are arrested and detained as contraband, says:

"It appears to me on principle to be but reasonable that when it is of sufficient importance to the enemy that such persons shall be sent out on the public service at the public expense, it should afford equal ground of forfeiture against the vessel that may be let out for a purpose so intimately connected with the hostile operations."

I trust that I have shown that the four persons who were taken from the Trent by Captain Wilkes, and their despatches, were contraband of war.

The second inquiry is, whether Captain Wilkes had a right by the law of nations to detain and search the Trent.

The Trent, though she carried mails, was a contract or merchant vessel—a common carrier for hire. Maritime law knows only three classes of vessels—vessels of war, revenue vessels, and merchant vessels. The Trent falls within the latter class. Whatever disputes have existed concerning a right of visitation or search in time of peace, none, it is supposed, has existed in modern times about the right of a belligerent in time of war to capture contraband in neutral and even friendly merchant vessels, and of the right of visitation and search, in order to determine whether they are neutral, and are documented as such according to the law of nations.

I assume in the present case what, as I read British authorities, is regarded by Great Britain herself as true maritime law: That the circumstance that the Trent was proceeding from a neutral port to another neutral port does not modify the right of the belligerent captor.

The third question is whether Captain Wilkes exercised the right of search in a lawful and proper manner.

If any doubt hung over this point, as the case was presented in the statement of it adopted by the British government, I think it must have already passed away before the modifications of that statement which I have already submitted.

I proceed to the fourth inquiry, namely: Having found the suspected contraband of war on board the Trent, had Captain Wilkes a right to capture the same?

Such a capture is the chief, if not the only recognized, object of the permitted visitation and search. The principle of the law is, that the belligerent exposed to danger may prevent the contraband persons or things from applying

themselves or being applied to the hostile uses or purposes designed. The law is so very liberal in this respect that when contraband is found on board a neutral vessel, not only is the contraband forfeited, but the vessel which is the vehicle of its passage or transportation, being tainted, also becomes contraband, and is subjected to capture and confiscation.

Only the fifth question remains, namely: Did Captain Wilkes exercise the right of capturing the contraband in conformity with the law of nations?

It is just here that the difficulties of the case begin. What is the manner which the law of nations prescribes for disposing of the contraband when you have found and seized it on board of the neutral vessel? The answer would be easily found if the question were what you shall do with the contraband vessel. You must take or send her into a convenient port, and subject her to a judicial prosecution there in admiralty, which will try and decide the questions of belligerency, neutrality, contraband, and capture. So, again, you would promptly find the same answer if the question were, What is the manner of proceeding prescribed by the law of nations in regard to the contraband, if it be property or things of material or pecuniary value?

But the question here concerns the mode of procedure in regard, not to the vessel that was carrying the contraband, nor yet to contraband things which worked the forfeiture of the vessel, but to contraband persons.

The books of law are dumb. Yet the question is as important as it is difficult. First, the belligerent captor has a right to prevent the contraband officer, soldier, sailor, minister, messenger, or courier from proceeding in his unlawful voyage and reaching the destined scene of his injurious service. But, on the other hand, the person captured may be innocent—that is, he may not be contraband. He, therefore, has a right to a fair trial of the accusation against him. The neutral State that has taken him under its flag is bound to protect him if he is not contraband, and is therefore entitled to be satisfied upon that important question. The faith of that State is pledged to his safety, if innocent, as its justice is pledged to his surrender if he is really contraband. Here are conflicting claims, involving personal liberty, life, honor, and duty. Here are conflicting national claims, involving welfare, safety, honor, and empire. They require a tribunal and a trial. The captors and the captured are equals; the neutral and the belligerent state are equals.

While the law authorities were found silent, it was suggested at an early day by this government that you should take the captured persons into a convenient port, and institute judicial proceedings there to try the controversy. But only courts of admiralty have jurisdiction in maritime cases, and these courts have formulas to try only claims to contraband chattels, but none to try claims concerning contraband persons. The courts can entertain no proceedings and render no judgment in favor of or against the alleged contraband men.

It was replied all this was true; but you can reach in those courts a decision which will have the moral weight of a judicial one by a circuitous proceeding. Convey the suspected men, together with the suspected vessel, into port, and try there the question whether the vessel is contraband. You can prove it to be so by proving the suspected men to be contraband, and the court must then determine the vessel to be contraband. If the men are not contraband the vessel will escape condemnation. Still, there is no judgment for or against the captured persons. But it was assumed that there would result from the determination of the court concerning the vessel a legal certainty concerning the character of the men.

This course of proceeding seemed open to many objections. It elevates the incidental inferior private interest into the proper place of the main paramount public one, and possibly it may make the fortunes, the safety, or the existence of a nation depend on the accidents of a merely personal and pecuniary litigation. Moreover, when the judgment of the prize court upon the lawfulness of

the capture of the vessel is rendered, it really concludes nothing, and binds neither the belligerent state nor the neutral upon the great question of the disposition to be made of the captured contraband persons. That question is still to be really determined, if at all, by diplomatic arrangement or by war.

One may well express his surprise when told that the law of nations has furnished no more reasonable, practical, and perfect mode than this of determining questions of such grave import between sovereign powers. The regret we may feel on the occasion is nevertheless modified by the reflection that the difficulty is not altogether anomalous. Similar and equal deficiencies are found in every system of municipal law, especially in the system which exists in the greater portions of Great Britain and the United States. The title to personal property can hardly ever be resolved by a court without resorting to the fiction that the claimant has lost and the possessor has found it, and the title to real estate is disputed by real litigants under the names of imaginary persons. It must be confessed, however, that while all aggrieved nations demand, and all impartial ones concede, the need of some form of judicial process in determining the characters of contraband persons, no other form than the illogical and circuitous one thus described exists, nor has any other yet been suggested. Practically, therefore, the choice is between that judicial remedy or no judicial remedy whatever.

If there be no judicial remedy, the result is that the question must be determined by the captor himself, on the deck of the prize vessel. Very grave objections arise against such a course. The captor is armed, the neutral is unarmed. The captor is interested, prejudiced, and perhaps violent; the neutral, if truly neutral, is disinterested, subdued, and helpless. The tribunal is irresponsible, while its judgment is carried into instant execution. The captured party is compelled to submit, though bound by no legal, moral, or treaty obligation to acquiesce. Reparation is distant and problematical, and depends at last on the justice, magnanimity, or weakness of the state in whose behalf and by whose authority the capture was made. Out of these disputes reprisals and wars necessarily arise, and these are so frequent and destructive that it may well be doubted whether this form of remedy is not a greater social evil than all that could follow if the belligerent right of search were universally renounced and abolished forever. But carry the case one step farther. What if the state that has made the capture unreasonably refuse to hear the complaint of the neutral or to redress it? In that case, the very act of capture would be an act of war—of war begun without notice, and possibly entirely without provocation.

I think all unprejudiced minds will agree that, imperfect as the existing judicial remedy may be supposed to be, it would be, as a general practice, better to follow it than to adopt the summary one of leaving the decision with the captor, and relying upon diplomatic debates to review his decision. Practically, it is a question of choice between law, with its imperfections and delays, and war, with its evils and desolations. Nor is it ever to be forgotten that neutrality, honestly and justly preserved, is always the harbinger of peace, and therefore is the common interest of nations, which is only saying that it is the interest of humanity itself.

At the same time it is not to be denied that it may sometimes happen that the judicial remedy will become impossible, as by the shipwreck of the prize vessel, or other circumstances which excuse the captor from sending or taking her into port for confiscation. In such a case the right of the captor to the custody of the captured persons, and to dispose of them, if they are really contraband, so as to defeat their unlawful purposes, cannot reasonably be denied. What rule shall be applied in such a case? Clearly, the captor ought to be required to show that the failure of the judicial remedy results from circumstances beyond his control, and without his fault. Otherwise, he would be allowed to derive advantage from a wrongful act of his own.

In the present case, Captain Wilkes, after capturing the contraband persons

and making prize of the Trent in what seems to be a perfectly lawful manner, instead of sending her into port, released her from the capture, and permitted her to proceed with her whole cargo upon her voyage. He thus effectually prevented the judicial examination which might otherwise have occurred.

If, now, the capture of the contraband persons and the capture of the contraband vessel are to be regarded, not as two separate or distinct transactions under the law of nations, but as one transaction, one capture only, then it follows that the capture in this case was left unfinished, or was abandoned. Whether the United States have a right to retain the chief public benefits of it, namely, the custody of the captured persons on proving them to be contraband, will depend upon the preliminary question whether the leaving of the transaction unfinished was necessary, or whether it was unnecessary, and therefore voluntary. If it was necessary, Great Britain, as we suppose, must, of course, waive the defect, and the consequent failure of the judicial remedy. On the other hand, it is not seen how the United States can insist upon her waiver of that judicial remedy, if the defect of the capture resulted from an act of Captain Wilkes, which would be a fault on their own side,

Captain Wilkes has presented to this government his reasons for releasing the Trent. "I forbore to seize her," he says, "in consequence of my being so reduced in officers and crew, and the derangement it would cause innocent persons, there being a large number of passengers who would have been put to great loss and inconvenience, as well as disappointment, from the interruption it would have caused them in not being able to join the steamer from St. Thomas to Europe. I therefore concluded to sacrifice the interest of my officers and crew in the prize, and suffered her to proceed after the detention necessary to effect the transfer of those commissioners, considering I had obtained the important end I had in view, and which affected the interest of our country and interrupted the action of that of the confederates."

I shall consider, first, how these reasons ought to affect the action of this government; and secondly, how they ought to be expected to affect the action of Great Britain.

The reasons are satisfactory to this government, so far as Captain Wilkes is concerned. It could not desire that the San Jacinto, her officers and crew, should be exposed to danger and loss by weakening their number to detach a prize crew to go on board the Trent. Still less could it disavow the humane motive of preventing inconveniences, losses, and perhaps disasters, to the several hundred innocent passengers found on board the prize vessel. Nor could this government perceive any ground for questioning the fact that these reasons, though apparently incongruous, did operate in the mind of Captain Wilkes and determine him to release the Trent. Human actions generally proceed upon mingled, and sometimes conflicting motives. He measured the sacrifices which this decision would cost. It manifestly, however, did not occur to him that beyond the sacrifice of the private interests (as he calls them) of his officers and crew, there might also possibly be a sacrifice even of the chief and public object of his capture, namely, the right of his government to the custody and disposition of the captured persons, This government cannot censure him for this oversight. It confesses that the whole subject came unforeseen upon the government, as doubtless it did upon him. Its present convictions on the point in question are the result of deliberate examination and deduction now made, and not of any impressions previously formed.

Nevertheless, the question now is, not whether Captain Wilkes is justified to his government in what he did, but what is the present view of the government as to the effect of what he has done. Assuming now, for argument's sake only, that the release of the Trent, if voluntary, involved a waiver of the claim of the government to hold the captured persons, the United States could in that case have no hesitation in saying that the act which has thus already been ap-

proved by the government must be allowed to draw its legal consequence after it. It is of the very nature of a gift or a charity that the giver cannot, after the exercise of his benevolence is past, recall or modify its benefits.

We are thus brought directly to the question whether we are entitled to regard the release of the Trent as involuntary, or whether we are obliged to consider that it was voluntary. Clearly the release would have been involuntary had it been made solely upon the first ground assigned for it by Captain Wilkes, namely, a want of a sufficient force to send the prize vessel into port for adjudication. It is not the duty of a captor to hazard his own vessel in order to secure a judicial examination to the captured party. No large prize crew, however, is legally necessary, for it is the duty of the captured party to acquiesce, and go willingly before the tribunal to whose jurisdiction it appeals. If the captured party indicate purposes to employ means of resistance which the captor cannot with probable safety to himself overcome, he may properly leave the vessel to go forward; and neither she nor the State she represents can ever afterwards justly object that the captor deprived her of the judicial remedy to which she was entitled.

But the second reason assigned by Captain Wilkes for releasing the Trent differs from the first. At best, therefore, it must be held that Captain Wilkes, as he explains himself, acted from combined sentiments of prudence and generosity, and so that the release of the prize vessel was not strictly necessary or involuntary.

Secondly. How ought we to expect these explanations by Captain Wilkes of his reasons for leaving the capture incomplete to affect the action of the British government?

The observation upon this point which first occurs is, that Captain Wilkes's explanations were not made to the authorities of the captured vessel. If made known to them, they might have approved and taken the release upon the condition of waiving a judicial investigation of the whole transaction, or they might have refused to accept the release upon that condition.

But the case is one not with them, but with the British government. If we claim that Great Britain ought not to insist that a judicial trial has been lost because we voluntarily released the offending vessel out of consideration for her innocent passengers, I do not see how she is to be bound to acquiesce in the decision which was thus made by us without necessity on our part, and without knowledge of conditions or consent on her own. The question between Great Britain and ourselves thus stated would be a question not of right and of law, but of favor to be conceded by her to us in return for favors shown by us to her, of the value of which favors on both sides we ourselves shall be the judge. Of course the United States could have no thought of raising such a question in any case.

I trust that I have shown to the satisfaction of the British government, by a very simple and natural statement of the facts, and analysis of the law applicable to them, that this government has neither meditated, nor practiced, nor approved any deliberate wrong in the transaction to which they have called its attention; and, on the contrary, that what has happened has been simply an inadvertency, consisting in a departure, by the naval officer, free from any wrongful motive, from a rule uncertainly established, and probably by the several parties concerned either imperfectly understood or entirely unknown. For this error the British government has a right to expect the same reparation that we, as an independent State, should expect from Great Britain or from any other friendly nation in a similar case.

I have not been unaware that, in examining this question, I have fallen into an argument for what seems to be the British side of it against my own country. But I am relieved from all embarrassment on that subject. I had hardly fallen into that line of argument when I discovered that I was really defending and

maintaining, not an exclusively British interest, but an old, honored, and cherished American cause, not upon British authorities, but upon principles that constitute a large portion of the distinctive policy by which the United States have developed the resources of a continent, and thus becoming a considerable maritime power, have won the respect and confidence of many nations. These principles were laid down for us in 1804, by James Madison, when Secretary of State in the administration of Thomas Jefferson, in instructions given to James Monroe, our Minister to England. Although the case before him concerned a description of persons different from those who are incidentally the subjects of the present discussion, the ground he assumed then was the same I now occupy, and the arguments by which he sustained himself upon it, have been an inspiration to me in preparing this reply.

"Whenever," he says, "property found in a neutral vessel is supposed to be liable on any ground to capture and condemnation, the rule in all cases is, that the question shall not be decided by the captor, but be carried before a legal tribunal, where a regular trial may be had, and where the captor himself is liable to damages for an abuse of his power. Can it be reasonable, then, or just, that a belligerent commander who is thus restricted, and thus responsible in a case of mere property of trivial amount, should be permitted, without recurring to any tribunal whatever, to examine the crew of a neutral vessel, to decide the important question of their respective allegiances, and to carry that decision into execution by forcing every individual he may choose into a service abhorrent to his feelings, cutting him off from his most tender connexions, exposing his mind and his person to the most humiliating discipline, and his life itself to the greatest danger. Reason, justice and humanity unite in protesting against so extravagant a proceeding."

If I decide this case in favor of my own government, I must disavow its most cherished principles, and reverse and forever abandon its essential policy. The country cannot afford the sacrifice. If I maintain those principles, and adhere to that policy, I must surrender the case itself. It will be seen, therefore, that this government could not deny the justice of the claim presented to us in this respect upon its merits. We are asked to do to the British nation just what we have always insisted all nations ought to do to us.

The claim of the British government is not made in a discourteous manner. This government, since its first organization, has never used more guarded language in a similar case.

In coming to my conclusion I have not forgotten that, if the safety of this Union required the detention of the captured persons, it would be the right and duty of this government to detain them. But the effectual check and waning proportions of the existing insurrection, as well as the comparative unimportance of the captured persons themselves, when dispassionately weighed, happily forbid me from resorting to that defence.

Nor am I unaware that American citizens are not in any case to be unnecessarily surrendered for any purpose into the keeping of a foreign State. Only the captured persons, however, or others who are interested in them, could justly raise a question on that ground.

Nor have I been tempted at all by suggestions that cases might be found in history where Great Britain refused to yield to other nations, and even to ourselves, claims like that which is now before us. Those cases occurred when Great Britain, as well as the United States, was the home of generations, which, with all their peculiar interests and passions, have passed away. She could in no other way so effectually disavow any such injury as we think she does by assuming now as her own the ground upon which we then stood. It would tell little for our own claims to the character of a just and magnanimous people if we should so far consent to be guided by the law of retaliation as to lift up buried

injuries from their graves to oppose against what national consistency and the national conscience compel us to regard as a claim intrinsically right.

Putting behind me all suggestions of this kind, I prefer to express my satisfaction that, by the adjustment of the present case upon principles confessedly American, and yet, as I trust, mutually satisfactory to both of the nations concerned, a question is finally and rightly settled between them, which, heretofore exhausting not only all forms of peaceful discussion, but also the arbitrament of war itself, for more than half a century alienated the two countries from each other, and perplexed with fears and apprehensions all other nations.

The four persons in question are now held in military custody at Fort Warren, in the State of Massachusetts. They will be cheerfully liberated. Your lordship will please indicate a time and place for receiving them.

I avail myself of this occasion to offer to your lordship a renewed assurance of my very high consideration.

WILLIAM H. SEWARD.

The Right Honorable Lord LYONS, *&c., &c., &c.*

Mr. Thouvenel to Mr. Mercier.

[Translation.]

ADMINISTRATION OF FOREIGN AFFAIRS,
Political Department, Paris, December 3, 1861.

SIR: The arrest of Messrs. Mason and Slidell, on board the English packet Trent, by an American cruiser, has produced in France, if not the same emotion as in England, at least extreme astonishment and sensation. Public sentiment was at once engrossed with the lawfulness and the consequence of such an act, and the impression which has resulted from this has not been for an instant doubtful.

The fact has appeared so much out of accordance with the ordinary rules of international law that it has chosen to throw the responsibility for it exclusively on the commander of the San Jacinto. It is not yet given to us to know whether this supposition is well founded; and the government of the Emperor has, therefore, also had to examine the question raised by the taking away of the two passengers from the Trent. The desire to contribute to prevent a conflict, perhaps imminent, between two powers for which it is animated by sentiments equally friendly, and the duty to uphold, for the purpose of placing the rights of its own flag under shelter from any attack, certain principles, essential to the security of neutrals, have, after mature reflection, convinced it that it could not, under the circumstances, remain entirely silent.

If, to our deep regret, the cabinet at Washington were disposed to approve the conduct of the commander of the San Jacinto, it would be either by considering Messrs. Mason and Slidell as enemies, or as seeing in them nothing but rebels. In the one, as in the other case, there would be a forgetfulness, extremely annoying, of principles upon which we have always found the United States in agreement with us.

By what title in effect would the American cruiser, in the first case, have arrested Messrs. Mason and Slidell? The United States have admitted with us, in the treaties concluded between the two countries, that the freedom of the flag extends itself over the persons found on board, should they be enemies of one of the two parties, unless the question is of military people actually in the service of the enemy. Messrs. Mason and Slidell were, therefore, by virtue of this principle, which we have never found any difficulty in causing to be inserted in our treaties of friendship and commerce, perfectly at liberty under the neutral

flag of England. Doubtless it will not be pretended that they could be considered as contraband of war. That which constitutes contraband of war is not yet, it is true, exactly settled; the limitations are not absolutely the same for all the powers; but in what relates to persons, the special stipulations which are found in the treaties concerning military people define plainly the character of those who only can be seized upon by belligerents; but there is no need to demonstrate that Messrs. Mason and Slidell could not be assimilated to persons in that category. There remains, therefore, to invoke, in explanation of their capture, only the pretext that they were the bearers of official despatches from the enemy; but this is the moment to recall a circumstance which governs all this affair, and which renders the conduct of the American cruiser unjustifiable.

The Trent was not destined to a point belonging to one of the belligerents. She was carrying to a neutral country her cargo and her passengers; and, moreover, it was in a neutral port that they were taken. If it were admissible that, under such conditions, the neutral flag does not completely cover the persons and merchandise it carries, its immunity would be nothing more than an idle word; at any moment the commerce and the navigation of third powers would have to suffer from their innocent and even their indirect relations with the one or the other of the belligerents. These last would no longer find themselves as having only the right to exact from the neutral entire impartiality, and to interdict all intermeddling on his part in acts of hostility. They would impose on his freedom of commerce and navigation restrictions which modern international law has refused to admit as legitimate; and we should, in a word, fall back upon vexatious practices, against which, in other epochs, no power has more earnestly protested than the United States.

If the cabinet of Washington would only look on the two persons arrested as rebels, whom it is always lawful to seize, the question, to place it on other ground, could not be solved, however, in a sense in favor of the commander of the San Jacinto. There would be, in such case, misapprehension of the principle which makes a vessel a portion of the territory of the nation whose flag it bears, and violation of that immunity which prohibits a foreign sovereign, by consequence, from the exercise of his jurisdiction. It certainly is not necessary to recall to mind with what energy, under every circumstance, the government of the United States has maintained this immunity, and the right of asylum which is the consequence of it.

Not wishing to enter upon a more deep discussion of the questions raised by the capture of Messrs. Mason and Slidell, I have said enough, I think, to settle the point that the cabinet of Washington could not, without striking a blow at the principles which all neutral nations are alike interested in holding in respect, nor without taking the attitude of contradiction of its own course up to this time, give its approbation to the proceedings of the commander of the San Jacinto. In this state of things it evidently should not, according to our views, hesitate about the determination to be taken.

Lord Lyons is already instructed to present the demand for satisfaction which the English cabinet is under the necessity of reducing to form, and which consists in the immediate release of the persons taken from on board the Trent, and in sending explanations which may take from this act its offensive character toward the British flag. The federal government will be inspired by a just and exalted feeling in deferring to these requests. One would search in vain to what end, for what interest, it would hazard to provoke, by a different attitude, a rupture with Great Britain.

For ourselves, we should see in that fact a deplorable complication, in every respect, of the difficulties with which the cabinet of Washington has already to struggle, and a precedent of a nature seriously to disquiet all the powers which continue outside of the existing contest. We believe that we give evidence of loyal friendship for the cabinet of Washington by not permitting it to remain

in ignorance, in this condition of things, of our manner of regarding it. I request you, therefore, sir, to seize the first occasion of opening yourself frankly to Mr. Seward, and, if he asks it, send him a copy of this despatch.

Receive, sir, the assurance of my high consideration,

THOUVENEL.

Monsieur HENRI MERCIER,
Minister of the Emperor at Washington.

Mr. Seward to Mr. Mercier.

DEPARTMENT OF STATE,
Washington, December 27, 1861.

SIR: I have submitted to the President the copy you were so good as to give me of the despatch addressed to you on the 3d of December instant, concerning the recent proceedings of Captain Wilkes, in arresting certain persons on board of the British contract mail steamer Trent.

Before receiving the paper, however, the President had decided upon the disposition to be made of the subject, which has caused so much anxiety in Europe. That disposition of the subject, as I think, renders unnecessary any discussion of it, in reply to the comments of Mr. Thouvenel. I am permitted, however, to say that Mr. Thouvenel has not been in error in supposing, first, that the government of the United States has not acted in any spirit of disregard of the rights, or of the sensibilities, of the British nation, and that he is equally just in assuming that the United States would consistently vindicate, by their practice on this occasion, the character they have so long maintained as an advocate of the most liberal principles concerning the rights of neutral States in maritime war.

When the French government shall come to see at large the views of this government, and those of the government of Great Britain, on the subject now in question, and to compare them with the views expressed by Mr. Thouvenel on the part of France, it will probably perceive that, while it must be admitted that those three powers are equally impressed with the same desire for the establishment of principles favorable to neutral rights, there is, at the same time, not such an entire agreement concerning the application of those principles as is desirable to secure that important object.

The government of the United States will be happy if the occasion which has elicited this correspondence can be improved so as to secure a more definite agreement upon the whole subject by all maritime powers.

You will assure Mr. Thouvenel that this government appreciates as well the frankness of his explanations, as the spirit of friendship and good will towards the United States in which they are expressed.

It is a sincere pleasure for the United States to exchange assurances of a friendship which had its origin in associations the most sacred in the history of both countries.

I avail myself of this opportunity to renew to you, sir, the assurance of my high consideration.

WILLIAM H. SEWARD.

Mr. HENRI MERCIER, *&c., &c., &c.*

Lord Lyons to Mr. Seward.

WASHINGTON, *December* 27, 1861.

SIR: I have this morning received the note which you did me the honor to address to me yesterday, in answer to Earl Russell's despatch of the 30th November last, relative to the removal of Mr. Mason, Mr. Slidell, Mr. McFarland, and Mr. Eustis from the British mail packet "Trent."

I will, without any loss of time, forward to her Majesty's government a copy of the important communication which you have made to me.

I will also without delay, do myself the honor to confer with you personally on the arrangements to be made for delivering the four gentlemen to me, in order that they may be again placed under the protection of the British flag.

I have the honor to be, with the highest consideration, sir, your most obedient humble servant,

LYONS.

Hon. WILLIAM H. SEWARD, *&c., &c., &c.*

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